IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS NOS. 10108/1994, 2716/1998, 4847/1992, 4733/1992, 4427/1992, 4153/1991, 4210/1985, AND 941/1980

WITH

SPECIAL CIVIL APPLICATIONS NOS. 6461/1996, 6519/1998 8882/1999 AND 8885/1999

WITH

SPECIAL CIVIL APPLICATION NO. 3537 OF 1995

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PALITANA SUGAR MILL PVT LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10108 of 1994

MR DR DHANUKA, SR. COUNSEL with MR PRASHANT G DESAI, MR ND NANAVATI, MR BH ANTIA, MR NA PANDYA, MR

MANEK KALYANI for petitioners
M/S PURNANAND & CO for Respondent No. 1
M/S THAKKAR ASSOC. for Respondent No. 2
MR JR NANAVATI for Respondent No. 3
RULE SERVED BY DS for Respondent No. 4

2. Special Civil Application No 2716 of 1998
MR BHUSHAN B OZA for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
MR JR NANAVATI for Respondent No. 3
MR ANANT S DAVE for Respondent No. 4

3. Special Civil Application No. 4847 of 1992
Mr. JR Nanavati for petitioners NOs. 1 and 2
Mr. Ajay R. Mehta for petitioener No.3
Mr. Prashant Desai for respondents Nos. 1 and 2
Mr. JD Ajmera for respondents Nos. 3 and 4

4. Special Civil Application No. 4733 of 1992
Mr. JR Nanavati for petitoiner
M/s.P & Co. for respondent No.1
Mr. Prashant Desai for respondents Nos. 2 and 3

5. Special Civil Application No. 4427 of 1992
Mr. JR Nanavat for petitoiner
M/s.P & Co. for respondent No.1
Mr. Prashant Desai for respondents Nos. 2 and 3

6. Special Civil Application No. 4153 of 1991
Mr. JR Nanavati for the petitioner
Government Pleader for respondents Nos. 1 and 2
Mrs. KA Mehta for respondent No.3
Mr. PG Desai for respondent No.4
No.6 party in person

7. Special Civil Application No. 4210 of 1985
Mr. RJ Oza for petitoiner
M/s. Patel Advocates
Govt. Pleader for Respondent NO.3
Mr.SN Shelat Addl. Advocate General for respondent No.4

8. Special Civil Application No. 941 of 1980
Mr.KG Vakharia for petitoiner
Mr.HV Chhatrapati for Respondents Nos. 1 to 7
Mr.PG Desai for respondent No.8
Mr.AJ Pandya for respondent NO.9
Mr.JR Nanavati for respondent NO.10
Mr.Haroobhai Mehta for respondent No.11

9. Special Civil Application No. 6461 of 1996

Mr.S.H.Sanjanwala Sr. Counsel with
Mr.R.S.Sanjanwala for petitioner
Mr.S.N.Shelat Addl. Advocate General for R-1
Mr. M.D.Pandya for R-2
Mr.B.P. Tanna for R-3

10. Special Civil Application No. 6519 of 1998
Mr.S.H.Sanjanwala Sr. Counsel with
Mr.R.S.Sanjanwala for petitioner
Mr.S.N.Shelat Addl. Advocate General for R-1
Mr. M.D.Pandya for R-2
Mr.B.P. Tanna for R-3

11. Special Civil Application No. 8882 of 1999
Mr.B.P.Tanna for Tanna Associates for petitioners
Mr.S.N.Shelat, Addl. Advocate General for R-1
Mr.MD Pandya for R-2
Mr.YN Oza Sr. Counsel for Mr.SJ Mehta for R 3-36

12. Special Civil Application No. 8885 of 1999
Mr.R.R.Marshal for Peititioner
Mr.SN Shelat Addl. Advocate General R-1
Mr.MD Pandya for R-2
Mr.YN Oza for R-3

13. Special Civil Application No. 3537 of 1995
Mr.M.C.Bhatt for petitioner
Mr.MD Pandya for R-1
Mr. SN Shelat, Addl Advocate General for R-2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL

Date of decision:24/11/2000

C.A.V. JUDGEMENT (Per D.M. DHARMADHIKARI, C.J.)

#. A common judgment, in this petition, and in group of petitions arising from Bhavnagar being Special Civil Applications Nos. 941 of 1980, 4210 of 1985, 2716 of 1998, 4153 of 1991, 4427 of 1992, 4733 of 1992 and 4847 of 1992, group of petitions arising from Surat being Special Civil Applications Nos. 8882 of 1999, 8885 of 1999, 6519 of 1998, 6461 of 1996 and a petition arising from Vadodara being Special Civil Application No. 3537 of 1998, is being passed.

#. In this group of petitions arising from Bhavnagar, Surat and Vadodara, the petitioners in some of the cases,

who are land owners, have claimed a declaration that the reservation of the lands belonging to them for educational purposes of University stand statutorily lapsed, entitling the land owners to use of those lands, for their benefit by development and construction, in accordance with other regulatory provisions of the Gujarat Town Planning and Urban Development Act, 1976 (for brevity, hereinafter referred to as `the Town Planning Act').

#. We shall take up first for decision the group of petitions arising from Bhavnagar in which common points have been urged, although, differently by the learned counsel appearing in those cases, on the provisions of the Town Planning Act.

#. The present Special Civil Applications No. 10108 of 1994, 4210 of 1985 are petitions by the land owners, claiming a declaration that reservation of their lands by the Town Planning Authority lapses. Special Civil Application No. 2716 of 1998 is a public interest litigation. Special Civil Application No. 4427 of 1992 has been filed by the Bhavnagar University, seeking direction from this Court to the State Government and against the land owners that the lands in consideration deserve to be kept reserved for future need of the University. Special Civil Application NO. 4733 of 1992 is filed for the same purpose in support of the Bhavnagar University firstly by a Senate Member and a Student in a College affiliated to the University. Special Civil Application No. 941 of 1980 has been filed by Bhavnagar Municipal Corporation, claiming a direction against the Authorities and the land owners that the lands under consideration cannot be exempted under Section 20 and 21 of the Gujarat Urban Land (Ceiling and Regulation) Act, 1976 (for brevity, hereinafter referred to as `the ULC Act') which is now repealed in Gujarat by Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for brevity, hereinafter referred to as `the Repealing Act, 1999'). Special Civil Application No. 4847 of 1992 has been filed by two citizens of Bhavnagar as Public Interest Litigation, against the land owners, restraining them from developing the land and using the same for construction of houses for the alleged weaker sections of the society.

#. In substance, the main challenge made on behalf of the land owners to the action of the State and its Authorities under the Town Planning Act, is that for the period much longer than ten years, the land reserved having not been acquired from the land owners under the

provisions of Land Acquisition Act, 1894 (for brevity, hereinafter referred to as `the Acquisition Act') and failure of the Authorities to acquire it even after service of an express notice and within the prescribed period in accordance with sub-section (2) of Section 20 of the Town Planning Act, the designation or reservation of the lands lapses, entitling the land owners to a right to freely use the land in accordance with the general restrictions under the local laws.

#. Shorn of unnecessary details, factual background, briefly, may be stated as under:

By a registered sale deed executed on 30-3-1971, the petitioner Palitana Sugar Mills Private Limited purchased land bearing Survey Nos. 469/1, 470/1, 471/2, 471/3 and 472 of village Vadva, Taluka and District Bhavnagar admeasuring about 930 acres and 4 gunthas from the family members of the erstwhile Ruler of Bhavnagar State.

#. A Development Plan prepared by Bhavnagar Municipal Council was sanctioned under Section 17(1)(c) of the Town Planning Act by the State Government on 8-11-1985 and it was brought into force from 1-1-1986. Since the period of ten years had lapsed from the date of the coming into force of the final Development Plan and proceedings under the Land Acquisition Act were not commenced within such period in accordance with sub-section (2) of Section 20 of the Town Planning Act, the petitioners served a notice on the Authorities requiring them to acquire the land within six months from the date of service of such notice. The petitioners' case is that period of ten years and 6 months available for acquisition having been completed and the Authorities having failed to acquire or take any steps for acquisition of the land, the designation or the reservation of the land for the University purposes lapses, entitling the petitioners to the grant of relief of releasing of the land in their favour for development by them in accordance with law.

#. The alternative submission made on behalf of the land owners is that the University has no financial capacity to acquire the land and in fact its need has been fulfilled as an alternative land aggregating 200 acres has been allotted to them by the State Government which fact has not been disputed. An attempt on the part of the State Government and the University to again reserve the land by issuance of a Draft Revised Development Plan on 27-12-1995 is prima facie malafide and an abuse of statutory powers. It is again proposed to be reserved

with an oblique purpose to deprive the land owners of the use of their lands, resulting in breach of their fundamental right of carrying on their trade and business by unrestricted use of the land owned by them.

#. On behalf of the State Government the stand taken is that provision continued in Section 20(2) enabling service of notice by land owners for acquisition within six months on expiry of ten years period from the date of Final Development Plan, does not come into operation, where, the Final Development Plan is in the process of revision under Section 21 of the Town Planning Act, read with Sections 9 to 20 of the Act. It is pointed out on behalf of the State Government that the Final Development Plan which came into force on 1-1-1986 is under revision in accordance with Section 21 of the Town Planning Act with issuance of Draft Revised Development Plan on 27-12-1995, in which certain lands belonging to the petitioners continued to be shown as reserved for the purposes of University.

##. The petition filed by the land owners has been opposed on the stand taken by the State Government as also on other grounds (which we shall deal with separately) by Bhavnagar University, its Senate Member, and student who have filed separate petitions. A few citizens of Bhavnagar by Public Interest Litigation have also opposed the claim of the land owners. There is also a petition filed by Bhavnagar Municipal Corporation raising certain different grounds on the exemption of the land from the provisions of the ULC Act (now repealed).

##. We shall first take up for consideration the arguments advanced by the learned Sr. Counsel Shri Dhanuka, appearing for the land owners, the Additional Advocate General Shri S.N. Shelat for the State and Shri J.R. Nanavaty, for the University on the interpretation and legal effect of the provisions of Section 20 of the Town Planning Act.

##. Since the main question raised before us is of the interpretation of the provisions of Section 20 of the Town Planning Act, it would be necessary to briefly survey the relevant provisions of the Town Planning Act.

##. As the preamble of the Town Planning Act indicates, it is "an Act to consolidate and amend the law relating to making and execution of development plans and town planning schemes in the State of Gujarat". In accordance with Section 1(3), by Notification issued by the Government, it is brought into force in the State of

Gujarat, with effect from 1-2-1978. Section 2 contains the definition clause and the relevant definition in sub-clause (x) defines "development plan" to mean `a plan for development or redevelopment or improvement of a development area'. Under Section 3, for the purpose of planned development, the State Government may by Notification specify the development areas. Under Section 4, the State Government by Notification, may exclude the whole or part of a development area from operation of the Act. Under Section 5, provision is made for constitution of "Area Development Authorities", consisting of Nominees of the Government and Local Authorities, as specified therein. Under Section 6, the Government is empowered to designate any Local Authority functioning in the development area as an Area Development Authority, instead of constituting a Development Authority. Section 7, contains the powers and functions of Area Development Authority, which amongst others include, preparation of Development Plan, Town Planning Schemes and to control the development activities. The other relevant Section 9 provides that "not later than three years after the declaration of such area as a development area or within such time as the State Government may, from time to time, extend, the authority shall prepare and submit to the State Government, a draft development plan, for the whole or any part of the development area". On the failure of development authority to prepare such a plan, the State Government has to prepare a development plan within the period of three years. Under Section 10, the draft development plan has to be kept open for public inspection. Section 12, in its relevant sub-clauses containing provisions showing the contents of draft development plan, deserves to be reproduced, for deciding points raised in this batch of petitions:

"Contents of draft development plan.

(1) A draft development plan shall generally indicate the manner in which the use of land in the area covered by it shall be regulated and also indicate the manner in which the development therein shall be carried out.

(2) In particular, it shall provide, so far as may be necessary, for all or any of the following matters, namely:-

(a) x x x x x x

(b) proposals for the reservation of land for public purposes, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and

places for public entertainment, public assembly, museums, art galleries, religious buildings, playgrounds, stadia, open spaces, dairies and for such other purposes as may, form time to time, be specified by the State Government;

(c) x x x x x x

(d) transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extension and development;

(e) x x x x x x

(f) reservation of land for community facilities and services;

(g) x x x x x x

(h) x x x x x x

(i) x x x x x x

(j) x x x x x x

(k) proposals for the reservation of land for the purpose of Union, any State, local authority or any other or body established by or under any law for the time being in force;

(l) x x x x x x

(m) x x x x x x

(n) provision for preventing or removing pollution of water or air caused by the discharge of waste or other means as a result of the use of land;

(o) such other proposals for public or other purposes as may from time to time be approved by the area development authority or as may be directed by the State Government in this behalf."

##. Section 13 requires publication of draft development plan, for the purpose of inviting suggestions and objections from public and affected parties. Under Section 14, the suggestions are required to be considered, and under Section 15, necessary modifications may be made in the draft development plan. The modified draft development plan has to be submitted to the State Government for sanction. Under Section 17, the State Government may sanction the draft development plan with further modifications, as deemed necessary, and after publishing the same again, for inviting suggestions and objections in the Official Gazette.

##. In sub clause (d) of sub-section (1) of Section 17, the sanction accorded to the draft development plan by the State Government shall be notified in the Official Gazette, and on such sanction, it shall be called "the final development plan", which shall come into force from a date to be notified, which shall not be not earlier

than one month from the date of publication of such sanction. Sub-section (2) of Section 17 requires the State Government to observe certain precautions with regard to the reservation of land for specific purposes mentioned in Section 12, but, only on the satisfaction that the land, so reserved, is likely to be acquired within ten years from the publication of final development plan. Sub-section (2) of Section 17 deserves to be quoted in full, as some arguments were advanced on its scope and effect:-

"17(2) Where the draft development plan submitted by an area development authority or, as the case may be, the authorised officer contains any proposals for the reservation of any land for a purpose specified in clause (b) or clause (n) or clause (o) of sub-section (2) of Section 12 and such land does not vest in the area development authority, the State Government shall not include the said reservation in the development plan, unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force."

##. Under Section 18, the State Government has been empowered even to amend the final development plan, by extending or reducing its area. Under Section 19, the State Government is empowered to vary the final development plan, but, only after inviting suggestions and objections in the manner laid down in the said Section. Section 20 provides for acquisition of land designated or reserved for specified purposes mentioned in Section 12, and the said Section is before us for proper interpretation, and therefore, the same is reproduced in full:

"Sec.20. Acquisition of land.

(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), clause (f), clause (k), clause (n) or clause (o) of sub-section (2) of section 12, may acquire th eland either by agreement or under the provisions of th eland Acquisition Act, 1894, I of 1894.

(2) If the land referred to in sub-section(1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings

under the Land Acquisition Act, 1894 I of 1894, are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisitions, the designation of the land as aforesaid shall be deemed to have lapsed."

[Underlining for supplying emphasis]

##. For proper construction of Section 20 quoted above, the most relevant Section, which also has to be interpreted harmoniously with other provisions is Section 21, authorising revision of final development plan, at least once in ten years. Section 21 of revision of development plan also deserves to be quoted in full:

"Sec.21. Revision of development plan.

Atleast once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if necessary, a fresh survey and the provisions of sections 9 to 20, shall, so far as may be, apply to such revision."

##. The other provisions of the Act contained in Chapter III for constitution of urban development areas, control of development and use of land in Chapter IV and Chapter V containing town planning schemes etc, being not directly relevant, are not being dealt with or quoted.

##. Learned Sr. Counsel Shri Dhanuka appearing for the land owners, in cases arising from Bhavnagar, has raised the following contentions:

##. Firstly, it is contended that Section 20(1) and Section 20(2) of the Town Planning Act are mandatory. No steps whatsoever were taken by the Bhavnagar University or by the State Government for acquisition of the land of the petitioner which was reserved. No proceedings were commenced for acquisition, within a long period of ten years from 1-1-1986 i.e. the date, when final development plan was brought into force. No action for acquisition was taken within six months notice period, in accordance with subsection (2) of Section 20. This inaction on the part of the authorities showed that there was no need of the petitioners land for the specified purpose for which it was reserved. It also shows that no funds were available for acquisition and making payment

of the market value of the petitioners lands.

##. It is next urged that by this time, due to total inaction on the part of the authorities of the State and the Bhavnagar Development Authority as also the University, the petitioners' lands stand unlawfully freezed with no utility to the petitioners for a long period of 37 years. It is submitted that reservation of land cannot be made for an indefinite period of time, and exercise of such power of reservation amounts to fraud on exercise of power. On the above contentions, it is submitted that on expiry of ten years period from the coming into force of the final development plan, and thereafter, inability of the authorities to acquire the land within six months from the date of service of notice for acquisition by the petitioners, the statutory result, as provided in subsection (2) of Section 20 of the Act, is dereservation of the land designated for particular specified use or purpose, and entitlement to grant of relief to the petitioners of restoration of said land for development by them, in accordance with law. Strong reliance has been placed on the decision of Supreme Court in the case of Municipal Corporation of Greater Bombay vs. Dr. Hakim Vad Tenants Association and others AIR 1988 SC 233, decision of learned Single Judge Justice M.R. Calla, J of this Court in the case of Bhikubhai Shyamaldas Patel v. State of Gujarat (1995) 36(2) GLR 1694. Another decision of learned Single Judge Justice Rajesh Balia of this Court (as he then was) in Heirs and Legal Representatives of Prabhudas Ramdas Patel v. Ahmedabad Municipal Corporation AIR 1999 Guj 98. Reliance is also placed on Division Bench decision of High Court of Bombay, (Aurangabad Bench) in Madhav Raghunath Thatte v. Director Town Planning, Maharashtra State 1998 BLR 118, Walter John Duming Alvaris v. State of Maharashtra 1997 BLR 577 and unreported decision of learned Single Judge Justice A.P. Shah of Bombay High Court in Writ Petition No. 641 of 1996 decided in September 1996 (of which a copy was supplied to the Court). Learned counsel for the petitioner concludes by saying that only by proposing to revise the final development plan under Section 21 of the Act and initiating proceedings for the same, the statutory effect of dereservation of land on the failure of the authorities to acquire it in ten years and thereafter within the six months notice period, cannot be avoided.

##. Learned Additional Advocate General appearing for the State opposed the petitions of the land owners on contentions, inter alia, that undoubtedly the period of ten years provided for acquisition of the land reserved

under Section 20(1) has long back expired and acquisition was also not made within the six months notice period, nonetheless, the reservation of the land would not lapse as the concerned urban development authority has issued a draft revised development plan under Section 21 of the Act for sanction of the State Government. The provisions of Section 20(2), therefore, stand arrested and the reservation or designation of the land for the purpose specified would not lapse. It is argued that Section 21 is an enabling Section. It enjoins the urban/area development authority to revise the development plan atleast once in ten years. If the area development authority resolves to do so, provisions of Section 9 to 20 of the Act are required to be applied before revised development plan becomes the final development plan, under Section 17(1)(c) of the Act. Section 21 specifically makes Section 9 to 20 applicable to preparation of revised development plan to be submitted for sanction of the State Government.

##. It is further argued that Section 18 of the Town Planning act takes care of extension or reduction of development plan, whereas Section 21 is provision specifically made for revision. The word `revision' means `revision of all components of development plan' including proposed land use, circulation net work, development control regulation as well as needs for amenities, services, utilities and facilities, keeping the change in needs of the increased population. Further, it does include carrying out of fresh surveys to know the exact development as well as development trend. So, it is more a new exercise of preparation of altogether a revised development plan. The revision of the development plan includes integration of the new technology, new policies of the Government and changing needs of the society. In the light of the above, revision is an exhaustive exercise of physical planning, incorporating economic, social, political, administrative and cultural environment.

##. By comparing Section 21 of Gujarat Town Planning Act with the provisions of Bombay Town Planning Act, from which arose the decision of Supreme Court, in the case of Dr. Hakim Vad (supra), it is urged that the words "every" in the 1954 Bombay Town Planning Act is consciously replaced by the words "atleast once in". The expression is different and means instead of "every ten years" "atleast once in ten years". This change was made in Section 21, to take care of fast changing needs of the urban areas. It is submitted that in matters of town planning and development of specified areas, ten or

twenty years period cannot be said to be a very long period.

##. It is submitted that the lands in question proposed are reserved for University, considering their long term educational needs and a phased planning of their activities. The contention advanced is that where the lands are reserved, for the purpose mentioned in clause (k) of subsection (2) of Section 12, for any Local Authority or Authority or body established by or under any law, such as, the Universities; as provided in sub-section (2) of Section 17, which refers to certain clauses of subsection (2) of Section 12 excluding clause (k), it was not necessary for the Government to be satisfied that the Authority had capability to acquire the land within ten years for the purpose of its reservation.

##. The further argument advanced is, once there is proposal for revision of development plan and action is taken under Section 9, 13, 15 and 16 of the Act, Section 20(2) cannot be availed of. It can be availed of only on the expiry of ten years from the date of sanction of the revised development plan.

##. It is contended that provisions of Section 21 cannot be read subject to the provisions of Section 20(2). If the area development authority has proposed a revised development plan, as required under Section 21, it may be open to the State Government not to accept the proposed land use or reservation and modifications can be suggested by the State Government. Till the revised proposed development plan is sanctioned, the land holders do not have any right to get a declaration, from this Court in proceedings under Article 226 of the Constitution of India, that the reservation under Section 20(2) of the Act has lapsed. In conclusion, it is submitted that the petitions, at this stage, by the land owners are all premature.

##. Heavy reliance is placed on the decision of Supreme Court in the case K.L.Gupte v. The Municipal Corporation of Greater Bombay and others AIR 1968 SC Corporation of Greater Bombay and others AIR 1968 SC 303 in which the provisions of Bombay Town Planning Act which are comparable to the provisions of the Act under consideration are said to have been construed and commented upon. The following observations of the Supreme Court in the case of K.L. Gupte (supra) on Section 7 of the Bombay Act comparable to Section 17(2) of the Gujarat Act fixing ten years period to be taken

into consideration by the Development Authority for reserving and acquisition of land for specified purposes for public use have been relied:

"The idea behind this sub-section is that if any land is to be set apart for public purposes such as parks etc. mentioned in cl. (b) of Section 7 or any other public purpose which might be approved by a local authority or directed by the State Government in terms of cl. (e) of Section 7, the State Government must examine whether it would be possible for the local authority, to be able to acquire such land by private agreement or compulsory purchase within a period of ten years. This acts as a check on the local authority making too ambitious proposals for designating lands for public purposes which they may never have the means to fulfil. It is obvious that the local authority must be given a reasonable time for the purpose and the legislative thought that a period of ten years was a sufficient one."

.....

"No one can be heard to say that the local authority after making up its mind to acquire land for a public purpose must do so within as short a period of time as possible. .... The finances of a local authority are not unlimited nor have they the power to execute all schemes of proper utilisation of land set apart for public purposes as expeditiously as one would like. They can only do this by proceeding with their scheme gradually, by improving portions of the area at a time, obtaining money from persons whose lands had been improved and augmenting the same with their own resources so as to be able to take up the improvement work with regard to another area marked out for development. The period of ten years fixed at first cannot therefore be taken to be the ultimate length of time within which they had to complete their work. The legislature fixed upon this period as being a reasonable one in the circumstances obtaining at the time when the statute was enacted. We cannot further overlook the fact that modifications to the final development plan were not beyond the range of possibility. We cannot therefore hold that the limit of time fixed under S.4 read with S. 11(3) forms an unreasonable restriction on the rights of a person to hold his property."

##. It is submitted that ten years period referred to in Section 17(2), and fixed under Section 20(2) of Gujarat Act, providing lapsing of `designation' or `reservation' of land, on service of six months notice, is not an outer limit for reservation of areas in the revised development plans proposed under Section 21 of the Gujarat Act. Strong reliance has been placed on the following observations of the Supreme Court in the case of Ahmedabad Urban Development Authority vs. Manilal Gordhandas and others AIR 1996 SC 2804:

"On behalf of the writ petitioners it was pointed out that if it is held that period of 10 years is to be counted with reference to the land owners or the persons interested by sub-sec. (2) of section 20 to give notice after the expiry of the period of 10 years from coming into force of the final development plan, can be defeated by any area development authority by notifying a fresh draft development plan just on expiry of the final plan including fresh areas. In other words, any area development authority on verge of the expiry of the period of 10 years of a final development plan, may include that area into another draft development plan along with other areas to defeat the right which had accrued or was likely to accrue to the land owners or the persons interested under sub-section (2) of section 20. If such power is exercised with ulterior motive and with an object to defeat the statutory right of persons interested, Courts will be perfectly justified in nullifying such actions of area development authorities. But in the present case, as has been pointed out above, the draft development plan had been submitted by the appellant as early as on 23.7.1981, much before the draft development plan submitted by the Corporation was sanctioned on 12.8.1983. There is no scope for attributing any bad faith or malice on the part of the appellant or the State Government in the facts and circumstances of the present case. In all fairness none of the counsel appearing for the writ petitioners-respondents took such a stand that the State Government approved the draft development plan submitted by the appellant on 2.11.1987, only to defeat the right which was to accrue to the land owners or persons interested in the next few years."

##. Learned Additional Advocate General argued that the

law with which we are dealing is of Town Planning and Urban Development and period of ten years or 20 years is not an unreasonable period for the authorities to be able to plan the urban development and schemes. It is submitted that 10 years period, therefore, fixed under Section 20(2) r.w. Section 17(2) of the Gujarat Act should not be taken to be the maximum limit so as to deprive the State and the authorities from utilising the land reserved, regardless of its powers to revise development plans at least once in 10 years, as laid down in Section 21 of the Gujarat Act. The alternative argument advanced on behalf of the land owners is that power to keep land reserved for an indefinite period of time would be violation of the fundamental right of the petitioners under Article 19 of the Constitution of India. On behalf of the State the following observations of the Supreme court in the case of State of Kerala and others vs. T.M. Peter and another etc. etc. AIR 1980 SC 1438 have been relied:

> "The absence of any time limit for sanction of draft scheme by the development in section 12 of the Town Planning Act as is found in the proviso to sec. 6 of the Kerala Acquisition Act does not make for arbitrariness or discrimination invalidatory of the relevant provisions of the Town Planning Act if regard be had to specialised nature of improvement schemes and the democratic participation in the process required in such cases."

##. Reliance has also been placed on an unreported Division Bench decision of this Court to which one of us, namely, J.M. Panchal, J was a party in Special Civil Application No. 3328 of 1979 decided on 15.4.1991.

##. It is submitted on behalf of the State that Surat and Bhavnagar Area Development Authorities have submitted their revised proposed development plans for sanction before the State Government. Till the development plans are sanctioned, the only restraint for the land use in respect of the land owners' lands is that their use has to be consistent with the proposed revised development plan, or in the absence of such revised development plan, the use has to be consistent with the development plan already sanctioned. The requirement on part of the owner of the land to apply for development permission under Section 27 of the Act, and consideration of the same by the area development authority under Section 26 r.w. Section 29, is never obviated, irrespective of reservation or non reservation of any land in the

development area. As held by learned Single Judge of this Court (R.K. Abichandani, J) in Special Civil Application No. 2379 of 1992 decided on 27-12-1993 and upheld by Division Bench (Coram : A.P.Ravani and Rajesh Balia, JJ) in Letters Patent Appeal No. 55 of 1994 decided on 26-7-1994, the permission sought by land owners for development or use cannot be denied merely because there is a proposed development plan. It is held that the authorities are required to act consistently with the provisions of proposed revised development plan and are bound to grant permission consistent with the said plan for use of the land. It is submitted that the aforesaid decision of learned Single Judge and the Division Bench of this Court have received seal of approval by rejection of Special Leave Petition by the Supreme Court.

##. It is submitted that by mere reservation of land and its proposed re-reservation in the proposed revised development plan put no absolute restraint on the use of the land by the land owners. They can transfer the lands and enjoy it in any other manner. The limited restraint on the use of land is that it should be consistent with the existing development plan, or the revised development plan. It is submitted that in cases where the land is agricultural, the land owners can continue with their agricultural operations. It is, however, admitted that the land reserved for University or educational purposes cannot be used for any other purposes by the land owners.

##. On the interpretation sought to be placed on behalf of the land owners on Section 21 of the Gujarat Act, on behalf of the State, it is argued that the expression "so far as may be" for the purpose of making applicable the provisions of Section 9 to 20 as a procedure for revision of a final development plan, has to mean "in so far as they are specifically mentioned". Reliance is placed on decision of Supreme Court in Land Acquisition Officer v. H. Narayanaiah AIR 1976 SC 2403. It is submitted that the expression "so far may be" would exclude only those provisions which become inapplicable. It is submitted that application of general provisions of the Act, therefore, applied to revision of final development plan.

##. Reliance is also placed on the decision in M/s Barnagore Jute Factory Co. etc. etc. v. Inspector of Central Excise and Ors. etc. etc. JT 1991(4) SC 476. Taking help from the aforesaid decision the submission made is that employing the expression "so far as may be" for making applicable the provisions of Section 9 to 20 to revision of development plan under Section 21, the

mode of "legislation by reference" has been adopted. In support of the contention that expression "so far as may be" used in Section 21 is referential legislation to make all provisions of Section 9 to 20 applicable to Section 21, reference is also made to Bindra's book on "Interpretation of Statute" page 1032. The argument in substance advanced on behalf of the State is that once the urban/area development authority resolves to revise development plan and undertakes the procedure laid down as required under Section 21, provisions of Section 20(2) can not be applied until the expiry of ten years after the revised development plan is sanctioned. No land holder can issue notice under Section 20(2) of the Act, once there has been a proposal for the revision of the development plan and a proposal has been submitted for sanction, as required under the provisions of the Act. Section 20(2) of the Act does not enable the land holder to issue a notice of six months for acquisition of the land, on expiry of the period of ten years from the final development plan, in case, where there is already a proposal for revision of development plan before expiry of ten years, from the existing final development plan. The submission made is that in final revised development plan, there can be change of reservation, discontinuance of reservation or re-reservation and the effect is to be given by the courts to such reservation as proposed and sanctioned by the State Government. Where final development plan, before expiry of ten years period from its commencement, is under fresh revision in accordance with Section 21, the reservation on expiry of ten years period and six months notice period cannot lapse under Section 20(2) of the Act.

##. On the interpretation of Section 21 of the Act, assistance is sought from the decisions of this Court Kikabhai Ukabhai Patel and Others vs. State of Gujarat and Others reported in 1988 (1) XXIX(1) GLR 569, Devjibhai B. Chudasama and Others vs. State of Gujarat and Others 1988(2) XXIX(1) GLR 1339 and Municipal Corporation of the City of Ahmedabad and Another vs. Smt. Madhuriben A. Parikh 1995(2) XXXVI(2) GLR 1833.

##. On the interpretation of Section 20(2) of the Act on behalf of the State, it is contended that expression "no steps are commenced for its acquisition after service of six months notice" has to be construed giving it a wider meaning. Steps for commencement of acquisition proceedings are not the same thing as some commencement of acquisition proceedings. Steps for commencement of acquisition proceedings is a step little anterior to the actual commencement of acquisition proceedings. It is

submitted that the Legislature intends steps to commence the acquisition proceedings within six months period and not actual commencement of acquisition. Reliance is placed on decision in the case of M/s. Sadhu Singh Ghuman v. Food Corporation of India and others reported in AIR 1990 SC 893. Based on the interpretation of Section 34 of the Arbitration Act in which the expression "steps in the proceedings" have been construed to mean "a step in the aid of the progress of the suit", it is argued that if steps in aid of commencement of acquisition proceedings are consciously taken, the requirement of "taking steps" within the meaning of subsection (2) of Section 20 would be deemed to have been fulfilled.

##. To sum up learned Addl. Advocate General submitted that Legislature purposely provided in Section 21 that every development plan even finally sanctioned would atleast in every ten years is subject to revision and review. Such a provision was essential for urban development. With the passage of time and growth of population land use is sometimes required to be changed. Use as regards residence, industry, commerce had to be consistent with the growth of the population. The need for public utility services, educational services, may also vary with the need and growth of population. Reservation for the purpose of University, therefore, cannot be said to be an arbitrary action of the authorities. The lands proposed to be reserved again are situated within the University Campus and gradually the University may require the same for expansion of its activities. Planning for an educational institution is not a process to be done only once. It has to be gradual and from time to time. The decision of Supreme Court in the case of Dr. Hakim Vad Tenants Association (supra) AIR 1988 SC 233, which has been heavily relied on behalf of the land owners, is sought to be distinguished on behalf of the State by saying that there provision analogous to Section 20 of the Act only came up for interpretation but the provision empowering authorities from time to time to revise the development plans such as provision contained in Section 21 of the Gujarat Act never came up for consideration for deriving its meaning and effect.

##. It is submitted that unless there is material and circumstances to suggest that the act of the authorities in reserving and re-reserving certain lands is with ulterior motive or malicious, the reservation cannot be deemed to have lapsed when the existing final development plan is in the process of revision under Section 21 of

the Act.

##. So far as the ground urged on behalf of the land owners of violation of their fundamental rights under Article 19(1)(g), 14 and 31 of the Constitution is concerned, it is submitted that Town Planning Acts have been upheld in various decisions of the Supreme Court. There is no fundamental right to property as Article 19(1)(f) of the Constitution has been deleted. Under the Town Planning Act reservation or re-reservation of land does not deprive the land owner of the property. He is not deprived of any of his rights of possession of the property. The Act merely puts a restraint on the use of the land till the lands are acquired. The Town Planning Act is not an Act for acquisition, but, is a statute for control of land use in accordance with Section 26 to 31 of the Act. Even if the land is not acquired if the land is agricultural, the land owner has to use the land for that purpose and cannot divert it for commercial use. It is submitted that there is no violation of right to trade, occupation or business guaranteed under Article 19(1)(g) of the Constitution. There is no violation of Article 300A of the Constitution, because as and when the lands would be acquired the land owners would be entitled to award of compensation. There is also no breach of Article 14 of the Constitution, as nothing has been produced to show that the act of the authorities is not in keeping with the objects of the Act. It cannot be held to be ultravires the Constitution.

##. We have also heard at considerable length the counter replies of learned Sr. Counsel Shri Dhanuka, Sr. Counsel Shri Sanjanvala and Shri M.C. Bhatt, who, projected different points of view to help in interpretation of provisions of Section 20 of the Town Planning Act and in supporting the case of the land owners as petitioners.

##. In interpreting the provisions of a statute, certain basic principles have to be kept in mind. The first is that a particular provision in the statute should be harmoniously construed with other provisions of the said statute to ascertain the true meaning and object of the Legislation. The second principle well settled is that in interpreting the provisions of a statute, an interpretation which is likely to render the provision of the statute ineffective or otiose should be avoided. In the same principle is included the other that as far as possible, provision of a statute should be so construed as not to render it unconstitutional. From the survey of the provisions of the Act, as we have noticed above,

Section 12 of the Town Planning Act contemplates town planning through preparation of draft development plan which would contain not only proposals for designating certain areas for residential, industrial, commercial, agricultural or recreational purposes and for other purposes for maintaining environment and ecological balance, such as geological gardens, green belts, natural resorts and sanctuaries but it may also contain proposals for reservations of certain lands for public use. We do not consider it necessary to give much importance to the debatable issue whether the reservation in the development plan for `university' or `educational purposes' is covered by Section 12(2)(a) or (k) or residuary clause (o). Section 19(2) requires precaution on the part of the State Government to be taken while reserving the land in the draft development plan and makes a mention of reservation for purpose including schools, colleges and educational institutions. Section 19(2) refers to Section 12(2)(b) and there is no mention of clause (k) of the said subsection (2), which provides for reservation for purpose of Union, any State, local authority or any authority or body established by or under any law for the time being in force. The precaution that has to be taken under subsection (2) of Section 17 by the State Government is its satisfaction on objective basis that the authority for which the reservation is proposed to be made would be in a position to acquire the proposed reserved land by agreement or compulsory acquisition within ten years from the date on which the final development plan comes into force. The omission of mention of clause (k) in subsection (2) of Section 12 does not lead to an inference that such a precaution is not to be taken where the land is proposed to be reserved for a statutory body for education. Such a reservation by university is undoubtedly for the purposes of establishing educational institutions and covered by clause (b) as well of subsection (2) of Section 12.

##. Reading clause (b) and clause (k) of subsection (2) of Section 12, we find that where the proposed reservation is for a statutory body like university falling under clause (k), and the purpose of reservation is education, such proposed reservation would also fall under clause (b) of subsection (2) of Section 12. Subsection (2) of Section 17 requiring precaution to be taken to assess capacity of university to acquire the land proposed for reservation would undoubtedly apply to proposed reservation in a development plan for purposes covered in clause (b) and clause (k) of subsection (2) of Section 12.

##. The twin Sections 20 and 21, on the interpretation of which, there is so much divergence of opinion between the contending parties are required to be harmoniously construed with other provisions, particularly, those contained in Section 12 and Section 17 referred to above.

##. It is significant to note that in subsection (2) of Section 17, there is omission of mention of clause (k) of subsection (2) of Section 12 of proposed reservation for State and other statutory authorities. But, in Section 20, there is specific inclusion of clause (n) with clause (b) of subsection (2) of Section 12. Section 20(1) of the Act enables the authorities to acquire the land designated or reserved for purposes specifically mentioned in clauses (b) and (n) of subsection (2) of Section 12 and other clauses mentioned therein, either by acquisition of land or agreement by under the Land Acquisition Act. Subsection (2) of Section 20 which is to be interpreted correctly fixes a period of ten years from the enforcement of final development plan for the purpose of enabling the authorities to acquire the proposed `reserved' or `designated' land by agreement or by proceedings under the Land Acquisition Act. The said subsection (2) of Section 20, in the event of failure of the authorities to acquire the land by agreement or in land acquisition proceedings, confers a right on the owner or person interested in the designated or reserved land, to serve a notice on the authority to acquire the land and if, within six months after service of notice, no steps are commenced for its acquisition, designation of the land, for the purpose mentioned in clauses specified in subsection (2) of Sections 12 and 20, would lapse.

##. Since under Section 20 there is reference to specific clauses (b), (d), (f), (k) and (o) of subsection (2) of Section 12 and in Section 12 both the expressions `designation' and `reservation' are used, in our opinion, in the expression `designation' `shall be deemed to have lapsed' under subsection (2) would include `reservation' to have lapsed as well. The two words `designation' and `reservation' seem to be interchangeable for the purpose of the Act. This is so because clauses (b), (f) and (k) in subsection (2) uses the expression `proposals for reservation' whereas clauses (e), (n) and (o) do not use the word either `reservation' or `designation', but, only makes a mention of proposals for specific public purposes. All the above mentioned clauses containing use of expression `reservation' or omission of it find mention in subsection (1) of Section 20 to which

subsection (2) of Section 20 is made applicable specifically by mention of entire subsection (1) in opening part of subsection (2), to enable the authorities to acquire the land both `reserved' or `designated' within a period of ten years or within six months of service of notice by the land owner or person interested. The automatic result of service of notice is failure of the authorities in taking steps to acquire the land and is lapsing of designation or reservation of land affected by the Act.

##. Section 20 which confers a valuable right on the land owner or person interested in it to insist on the authority to acquire the land for the purpose of town planning within a reasonable fixed period of ten years has to be so construed as to allow its operation in a given contemplated situation. The provision contained in Section 20 cannot be construed in a manner that it would seldom be brought into operation or can be never brought into effect as and when the final development plan is made subject of revision under Section 21 of the Act. The object and intention behind on provisions similar to Section 20 to give right to the land owner or person interested in it to serve six months notice to get the land dereserved have been examined by the Supreme Court while interpreting provisions contained in Section 127 of the Maharashtra Town Planning Act in the case of Municipal Corporation of Greater Bombay vs. Dr. Hakim Vadi Tenants Association AIR 1988 SC 233 (supra). In construing the said provision with its manifest object in view it is stated:-

> "While the contention of learned counsel ....., it must be borne in mind that the period of six months provided by S. 127 upon the expiry of which the reservation of the land under a Development Plan lapses is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. By enacting S. 127 the legislature has struck a balance between the competing claims of the interests of the general public as regards the rights of an individual"

##. From the reading of subsection (2) of Section 20 what one finds is of utmost importance is the fixation of ten years period which appears to have been so fixed in view of ten years period mentioned in subsection (2) of Section 17. Ten years period both for purposes of Section 17(2) and for subsection (2) of Section 20 is

considered by the Legislature to be a reasonable period within which the land designated or reserved for one or more of the purposes mentioned in various clauses of subsection (2) of Section 12, should be acquired and failure to do so furnishes right to the land owner or person interested in it to serve six months notice for acquisition to the authority and get his land freed from the restraints under the Act to enable him to use or develop it according to his legal rights. As held by the Supreme court such a provision aims at striking a balance between the competing claims of the Authorities in the interest of general public and rights of an individual. Provisions of subsection (2) of Section 20 have to be, therefore, given full effect. They can not be rendered merely paper provisions available to the land owner in rarest of rare cases, such as is contended, where there is not even a proposal for revision of a final development plan within or on expiry of ten years period as specified.

##. There were some arguments advanced on the meaning of the expression "no steps are commenced for its acquisition" as used in last part of subsection (2) of Section 20 being a necessary requirement before the land due to its non-acquisition is deemed to have been dereserved.

##. We do not find much difficulty in giving proper meaning to the said expression. As contemplated by subsection (1) and opening part of subsection (2) acquisition of land `designated' or `reserved' for specified purposes" can be made by either of the two modes, i.e., by agreement or under Land Acquisition Act. Taking of steps for commencing of acquisition would, therefore, mean, any step in the direction of acquisition of land by agreement or by taking proceedings under the Land Acquisition Act. On behalf of the State, it was argued that there is some gap between steps for acquisition and commencement of acquisition. Even if that be true, we need not go into the niceties of law, because, there is nothing in the reply of the State Government in any of the petitions, that any steps meaning steps towards acquisition of land by agreement or under Land Acquisition Act were taken by State or the authority within the statutory period of six months on service of notice by the land owners.

##. It has rightly been contended on behalf of the State that provisions contained in subsection (1) and (2) of Section 20 cannot be construed in isolation and have to be construed in conjunction with other provisions,

particularly, Section 21. On the interpretation of provisions contained in Section 21, and its effect on the operation of the provisions of Section 20, there is serious difference of opinion, between the counsel addressing on behalf of the contending parties. On behalf of the State, it is contended that Section 21 is intended to enable the development authorities to revise the final development plan from time to time to make it upto date and bring it in tune with the existing realities as necessary for planned development. The opening part of Section 21 which confers power of revision of development plan uses the expression "atleast once in ten years". Use of this expression and mention of ten years is significant. To us, the plain meaning is that the final development plan must be revised minimum once in ten years and may be revised more than once in ten years. It also conveys that similarly on each expiry of ten years, it has to be subjected to revision at least once. This expression, in the proviso in Section 21 of the Act, however, cannot be read to nullify operation of Section 20 and render nugatory the period of ten years fixed as an outer limit for acquisition of reserved or designated land for specified purposes and creation of corresponding right to the land owners to serve six months' notice and get the land freed from designation or acquisition.

##. Section 21, in the matter of revision of final development plan, makes applicable to such revision the provisions of Sections 9 to 20 and in making them so applicable, uses the expression "so far as may be". Section 9 to 20 are the provisions containing procedure for preparation of a fresh final development plan. Arguments were advanced differently on interpretation and meaning of the expression "so far as may be". The meaning of the words "so far as may be" can be better understood by examining provisions of Sections 9 to 20 which are made applicable to revision of final development plan to be undertaken in exercise of powers under Section 21 of the Act. On examining the provisions of Sections 9 to 20 with Section 21, we find that the expression "so far as may be" has been used deliberately, because, Sections 9 to 20 of the Act are designed as a procedure for preparation of original draft development plan followed by the first final development plan. All the provisions of Sections 9 to 20 mutatis mutandis could not have been made applicable to the procedure for a revision of a final development plan to be undertaken from time to time `at least once in ten years'. This would be evident if the provisions of Section 9 are seen. That Section speaks of preparation of a first draft

development plan within a specified period of three years after the declaration of a `development area' and constitution of an `Area Development Authority'. Such a provision on plain language of subsection (1) of Section 9 is not attracted to the procedure of preparation of a revised final development plan under Section 21. Not all the provisions of subsection (1) of Section 9, excepting the requirement of submission of revised development plan to the State Government, would be applicable to the preparation of revised development plan. Section 12 which indicates the various purposes for which land can be designated and/or reserved for town planning is also applicable to a "revised development plan", and similarly, the other provisions e.g. in Section 13 requiring publication of the proposed plan, Section 14 inviting objections to the same, and their consideration, its modification and publication of modification and its submission to the State Government for sanction as contained in Sections 15 and 16 seem applicable to revision which may involve re-reservations or re-designation of lands with extension or reduction of areas as provided in Section 18. Section 19 conferring the power on the State Government to vary a final development plan would also apply to a revised final development plan. The main controversy is that whether Section 20 of the Act conferring right on the land owner on expiry of ten years to serve six months notice and to get his land freed from freezing, would also be applicable to revision of a final development plan under Section 21. The contention advanced on behalf of the State Government, by seeking some help from the observations in the two Supreme Court decisions, to which we shall shortly hereinafter refer, is that as and when the final development plan is proposed to be revised and proceedings for the same had already commenced, the provisions of Section 20 would get arrested taking away the right of the land owner or person interested from serving a notice and getting the land defreezed. It is argued that such action of revision under Section 21 is unassailable may be that it results in taking away right of the land owner of getting land defreezed. The action of revision under Section 21 is challengeable on limited grounds such as malafides or arbitrariness or irrationality in exercise of power by the State Government.

##. On a careful consideration of the submissions made by counsel for the contending parties, we find it difficult to accept the argument advanced on behalf of the State that within ten years or on expiry of ten years of the original development plan, whenever there is a

proposal by issuance of a draft revised final development plan, the land owner would lose his right of getting the land defreezed by serving six months' notice under subsection (2) of Section 20. In making applicable Section 20 of the Act to revision of development plan, in the language of Section 21, the use of expression `so far as may be' is very significant. The words `so far as may be' used in Section 21 for applying to the provisions, Sections 9 to 20 of the Act clearly intends to convey that the provisions of Sections 9 to 20 `in so far as they can be made applicable' would be followed in the process of revision under Section 21. The previous operation of Sections 9 to 20 resulting into preparation of a final development plan and on its commencement with expiry of ten years, a right created in favour of the land owner to serve six months' notice to get his land dereserved is not nullified by subsequent revision of the plan. A similar expression "so far they are applicable" came up for consideration before the Supreme court in the case of Land Acquisition Officer Vs. H. Narayanaiah AIR 1976 SC 2403 (supra). In the said case, Section 27 of the City of Bangalore Improvement Act contained a provision similarly worded saying that "acquisition otherwise than by agreement of land within or without the city under this Act shall be regulated by the provisions, so far as they are applicable, of the Mysore Land Acquisition Act, 1894. In construing the expression "so far as they are applicable", the Supreme Court observed:-

> "These words cannot be changed into in so far as they are specifically mentioned with regard to the procedure in the Acquisition Act. On the other hand, the obvious intention, in using these words, was to exclude only those provisions of the Acquisition Act which become inapplicable because of any special procedure prescribed by the Bangalore Act (e.g. Section 16) corresponding with that found in the Acquisition Act (e.g. or make applicable, so far this is reasonably possible general provisions such as Section 23(i) of the Acquisition Act. They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or, by a necessary implication excluded must be applied." (Underlining for the purpose of supplying emphasis)

##. On a plain and literal meaning to be given to expression "so far as may be" we find ourselves in

agreement with the submission made by learned counsel on behalf of the petitioners that the intention of the Legislature expressed by providing revision of final development plan, from time to time and at least once in every ten years under Section 21, is to make applicable the procedure of preparation of plan contained in Sections 9 to 20 of the Act to the extent possible or has held by the Supreme Court in the case of Land Acquisition Officer, Bangalore (supra) "so far as it is reasonably possible". The Legislature no doubt has specifically mentioned Section 20 in Section 21 in providing for revision of development plan by the authorities at least once in every ten years. The mention of Section 20 in Section 21 for revision does not show an intention of the legislature to curtail or take away the right already acquired by a land owner under Section 22 of getting his land defreezed. It was found necessary to apply Section 20 also to a revised development plan under Section 21 because in the course of long term planning and periodical revision of plans to meet the changing situations, contingencies are contemplated where on expiry of ten years from the earlier development plan although right accrues in favour of the land owner to get his land dereserved but such right is not exercised by service of six months notice by him. It is to meet such a contingency that in Section 21 there is a mention of Section 20 along with other Sections 9 in 19 of the Act. The mention of Section 20, in Section 21 with the use of expression "so far as may be" is intended to make applicable Section 20 to the extent reasonably possible. The conjoint effect of Section 20(2) produces a result that by initiating procedure for revision of a final development plan. Under Section 21, the operation of Section 20, on commencement and expiry of period of ten years and corresponding creation of right to the land owner to serve six months notice for getting the land dereserved, do not get arrested. Sections 9 to 21 of the Act, in course of revision of a development plan under Section 21, would be applicable to the extent rights have not already been created in favour of land owner under Section 20 on expiry of 10 years from the earlier final development plan and by service of six months notice with consequent failure of authority to acquire the land. Section 20 would however continue to apply in the course of revision under Section 21 where, even after expiry of ten years of ten years from the earlier final development plan the land owner has not served any six months notice for dereservation. That is how the two provisions of Section 20 and 21, in the light of other provisions, particularly Sections 9 to 19 of the Act, have to be harmoniously construed to maintain the balance between

the powers of the authorities for urban development and the rights of the owners of the lands designated or reserved.

##. It is difficult to accept the contention advanced on behalf of the State that as and when the process of preparation of draft revised development plan commences under Section 21 of the Act before or on expiry of ten years period counted from the earlier final development plan, the owner must go on waiting for further period of ten years from each revised development plan for the purpose of invoking his right of service of six months notice under Section 20(2) of the Act. Two learned Judges of this Court, namely, Rajesh Balia, J in AIR 1999 Guj 98 Heirs of Prabhudas Ramdas Patel vs. Ahmedabad Municipal Corporation and M.R. Calla, J in 1995 (2) 36 GLR 1694 Bikhubhai Shyamaldas Patel vs. State of Gujarat and others put similar interpretation on the provisions of Sections 20 and 21 with which we find ourselves in full agreement. Balia, J in the case of Prabhudas Ramdas Patel (supra) on construction of the said provisions observed as under:

> "It is also contemplated that after lapse of period shown in Section 20(2), the land can again be reserved for same or other purpose subject to the same limitation. If the contention of the respondents were to be accepted that once the land is reserved for development no subdivision can be granted, it would only mean that the authority can by successive declaration of reservation, without resorting to the acquisition of the land, can successfully deprive the owner of his right to enjoy the property without any consequence. That cannot be the intention of the legislation in enacting the said provision."

##. Similar line of reasoning can be found in the decisions of learned Single Judge M.R. Calla J in the case of Bhikhubhai Shyamaldas, where he observes :

> "The learned Counsel for the respondents have failed to show any provision in the Gujarat Town Planning and urban Development Act, 1976, according to which the same land which is kept lying unused on the basis of the notification under Sec. 12(2) thereof, may be re-included in the re-development plan so as to make the citizens deprived of their land decades after decades. If at all the land in question was to be made use of for the re-development, sufficient

> time was there at the disposal of the respondents to go ahead with the matter, but the respondents did not wake up from the slumber even after the service of the statutory notice under Sec. 20(2) and, therefore, now the same land cannot be included in the re-development plan again so as to make the petitioners to wait for another ten years, more particularly when there is no authority of law for doing so. The powers which have been given under Sec. 12 of the aforesaid Act had been exercised in the year 1983 and thus, the respondents exhausted the power by issuing such notification under Sec. 12(2) in the year 1983 and the power which stood exhausted way back in the year 1983 and the designation which was already lapsed on 6th October 1994 could not be given a new lease of life by including the same in the re-development plan. It is the settled principle of law that, what cannot be done directly, cannot be allowed to be done in an indirect manner and it is also trite law that once the statute provides a particular thing to be done in a particular manner, it has to be done in that manner alone. In the facts of this case, the legal consequences prescribed under Sec. 20 must follow the logical end and if the designation of the land has lapsed, the same cannot be revived by issuing the re-development plan again so as to prolong the agony of the citizens of the State without any justification."

##. It is brought to our notice that similar interpretation on some what comparable provisions contained in Section 127 of Maharashtra Regional and Town Planning Act has been placed by the Bombay High Court in decision reported in 1998 BLR 118 Madhav R. vs. Directorate of Town Planning, Maharashtra and an unreported decision of A.P. Shah, J dated 20-9-1996 in Writ Petition No. 641 of 1996 Rajendrakumar M. Gandhi vs. Municipal Corporation of Greater Bombay.

##. Before reaching the final conclusion on the interpretation of Sections 20 and 21 of the Town Planning Act, it is necessary to examine in some details the two judgments of the Supreme Court on which heavy reliance has been placed on behalf of the State. The first is of K.L. Gupte vs. Municipal Corporation of Greater Bombay AIR 1968 SC 303. In that case, the comparable provisions of Bombay Town Planning Act of 1955 came up for consideration on challenge to its vires by the land owners. The scheme of the entire Act and its provisions

were examined in detail to repel the contention of the land owners. The provision for designation and reservation of land for ten years and further right of revision every ten years with the result of long term reservation or designation of land for town planning, was challenged on the ground that it is an unreasonable exercise of power and violative of fundamental right guaranteed under under Article 14 and 19 of the Constitution. Such a challenge was repelled by the Supreme Court and its observations in the said judgment have to be understood in that context. The effect of Section 20 and 21 as has been examined and understood by us with the assistance of the observations made by Supreme court in the case of K.L.Gupte (supra) that no land owner can question that the land, which is already reserved for ten years under Section 20, cannot be subjected to further reservation for any period till it is acquired and actually put to public use, because town planning demand long term activities. There is justification of revision of Development Plans from time to time. The decision of Supreme Court and the observations of the Supreme Court in that case, in construing analogous provisions of Bombay Act, cannot be read and understood to mean that it negated the right of the land owner to get the land dereserved on expiry of ten years from final development plan, and on service of six months notice under subsection (3) of Section 11 of the Bombay Act. Section 11(3) conferring right on a owner of a land to serve six months notice for dereservation of his land, on expiry of ten years from commencement of development plan, is in material parts comparable to Section 20(2) of the Gujarat Act. Similarly Section 17 of the Bombay Act is materially same in comparison with Section 21 of the Gujarat Act providing revision of development plan at least once in every ten years.

##. In recognising, under the provisions of Section 11 and Section 17 of the Bombay Act the power of reservation and re-reservation of the same land in original and revised development plans, the Supreme Court in the case of K.L.Gupte (supra) has no where stated any proposition of law that valuable right conferred on a land owner under Section 11(3) of the Bombay Act of getting his land dereserved by service of six months' notice on expiry of ten years period from the commencement of last development plan, would be defeated or taken away, merely, by proposed revision of the final development plan. In our view, the observations of the Supreme Court, in the case of K.L.Gupte (supra), on which heavy reliance has been placed on behalf of the State, cannot

be read out of context in supporting the contention that provisions of Section 20 would get arrested to the prejudice of the land owner, as and when again a draft development plan in the process of revision of earlier Final Development Plan under Section 21, is issued. The other decision of the Supreme Court arising from the same Act and from a decision of this Court in Ahmedabad Urban Development Authority vs. Manilal Gordhandas AIR 1996 SC 2804 deserves to be carefully considered as the same is binding on this Court. From reading the judgment as a whole, in the facts set out in the said decision, we do not find that the contention as canvassed before us, on the combined effect of Section 20 and 21, in the manner as is being urged before us, arose in the case of Manilal Gordhandas (supra). To identify the distinguishing features of that case, a few relevant facts considered therein be taken note.

##. Prior to coming into force of Gujarat Town Planning and Urban Development Act, 1976 (i.e. the present Act before us) Bombay Town Planning Act, 1954 was applicable to the State of Gujarat. The Gujarat Act of 1976 came into force from 30-1-1978. Prior to it the development plan submitted by the Ahmedabad Municipal Corporation on 15-1-1976 came to be sanctioned by the State Government on 12-8-1983 i.e., after the coming into force of the Gujarat Act. The Supreme Court held that there was complete lack of application of mind on the part of the State Government because the draft development plan submitted on 15-1-1976, by the Corporation could not have been sanctioned under the provisions of Gujarat Town Planning Act of 1976 on 12-8-1993, overlooking the fact that in the mean time a comprehensive draft development plan had been prepared by the appellant Corporation and had been submitted on 23-7-1981 for sanction of the State Government. Thus the draft development plan dated 15-1-1976 prepared under the Bombay Act which came to be sanctioned on 12-8-1983, was not found to be valid by the Supreme Court. In the intervening period a draft development plan under the Gujarat Act had been submitted by the Corporation on 23-7-1981. The second development plan was also sanctioned by the State Government on 2-11-1987 which included the areas covered by the earlier illegally sanctioned plan on 12-8-1983. It is in the background of these peculiar facts that the question arose before the Supreme Court, as to from which date the period of ten years had to be counted for application of Section 20(2) of the Act. On the above facts, the question of commencement of period of ten years under Section 20(2) of the Act was answered by the Supreme Court thus :

"As in the present case the only question which is to be answered is as to with effect from which date 10 years period shall be counted, it has to be decided as to which date shall be deemed to be the date of coming into force of the final development plan, so far the area within the Corporation is concerned. The notification dated 2-11-1987, had been issued by the State government covering the area notified on 12-8-1983, several years before, the issuance of notices by the writ petitioners. The notification dated 2-11-1987, was neither questioned by the writ petitioners respondents nor could have been questioned, according to us. When power has been vested in the appellant to prepare a draft development plan and there being no bar to include in the said draft development plan even area, for which an earlier draft development plan had already been sanctioned, then the draft development plan which was sanctioned and notified on 2-11-1987, shall be deemed to be the final development plan within the meaning of Section 20 of the Gujarat Town Planning Act. As such the period of 10 years has to be calculated and counted with reference to 3-12-1987, the date when such final development plan was to come into force."

##. From the above quoted portion it is thus clear that for the purpose of commencement of 10 years period under Section 20(2) of the Act, the Supreme Court gave effect to the validly sanctioned plan under the new Act on 2-11-1987, by ignoring the earlier development plan prepared under the Bombay Act and sanctioned under the New Act on 12-8-1983.

##. In the above factual background and context the following observations of the Supreme Court have to be understood as not laying down that whenever there is proposal to revise existing valid final development plan the period of ten years, for exercise of right of the land owner to serve six months' notice and the resultant right to get the land dereserved, on failure on the part of the authorities to acquire the land, is taken away or can never come into operation. (See the following observation in the case of Manilal (supra):

"16. On behalf of the writ petitioners it was pointed out that if it is held that period of 10 years is to be counted with reference to

3-12-1987, then the right which has been provided to the land owners or the persons interested by sub-section (2) of Section 20 to give notice after the expiry of the period of 10 years from coming into force of the final development plan, can be defeated by any area development authority by notifying a fresh draft development plan just on expiry of the final plan including fresh areas. In other words, any area development authority on verge of the expiry of the period of ten years of a final development plan, may include that area in to another draft development plan along with other areas to defeat the right which had accrued or was likely to accrue to the land owners or the persons interested under subsection (2) of Section 20. If such power is exercised with ulterior motive and with an object to defeat the statutory right of persons interested, courts will be perfectly justified in nullifying such actions of area development authorities. But in the present case, as has been pointed out above the draft development plan had been submitted by the appellant as early as on 23-7-1981, much before the draft development plan submitted by the Corporation was sanctioned on 12-8-1983. There is no scope for attributing any bad faith or malice on the part of the appellant or the State Government in the facts and circumstances of the present case. In all fairness none of the counsel appearing for the writ petitioners - respondents took such a stand that the State government approved the draft development plan submitted by the appellant on 2-11-1987, only to defeat the right which was to accrue to the land owners or persons interested in the next few years.

17. We are not inclined to accept the submission made on behalf of the respondents that the effect of the sanctions given on 12-8-1983, and 2-11-1987, shall be that two final development plans had come into force. The effect of sanction given on 2-11-1987, shall be that the State Government had sanctioned the comprehensive draft plan prepared by the appellant with the area in respect of which State Government had purported to accord sanction on 12-8-1983. The respondent could not point out as to how the sanction of the State Government given by notification dated 2-11-1987, shall be illegal, in valid and not sanctioned by law. IN

the present case the draft development plan was submitted on 23-7-1981, by the appellant which was sanctioned on 2-11-1987. Then, it shall be deemed that the area in respect of which separate draft development plan had been sanctioned on 12-8-1983 merged and became part and parcel for the scheme and plan which had been submitted by AUDA on 23-7-1981, and which was sanctioned on 2-11-1987. It will be deemed that the final development plan came in force with effect from 3-12-1987, even in respect of area which was covered by the notification dated 12-8-1983.

18. We have already held that the State government could not have sanctioned the draft development plan submitted by the Corporation on 12-8-1983, because the Gujarat Town Planning Act, had come in force on 3-1-1978, and subsection (2) of Section 124 of the Gujarat Town Planning Act shall not save the plan submitted by the corporation, provisions of Sections 9 to 17 of the Gujarat Town Planning Act, being inconsistent with Sections 7 to 10 of the Bombay Town Planning Act. The State Government after coming into force of the Gujarat Town Planning Act should have ignored the draft development plan submitted by the Corporation on 15-1-1976. This was also necessary because a special Act, Gujarat Town Planning Act had been enacted on 19-6-1976, with the sole object to develop the urban areas of the State in accordance with the provisions of the said Act." [Underlining for emphasis]

##. We have fully reproduced the relevant paragraphs 15 to 18 of the decision of the Supreme Court in Manilal Gordhandas cas (supra) to high light that the fact of commencement of a valid final development plan for operation of the provisions of Section 20 of the Act and effect of revision of the final development plan under Section 21, with corresponding right or deprivation of right to the owner of getting his land dereserved, did not directly arise before the Supreme Court in the case of Gordhandas (supra). The observations quoted above cannot be read and relied out of context, in support of the contentions advanced on behalf of the State.

##. Our conclusion, therefore, on the interpretation of Section 20 and 21 of the Act is that mere issuance of a draft revised final development plan under Section 21 of the Act by the Authority, shall not take away the right already accrued and vested in the land owner on expiry of

10 years period from the existing Final development plan and failure of the authority to acquire the land in six months notice period. In the case of all the land owners before us provisions of Section 20 have been availed and would therefore operate to their benefit into resulting of the dereservation of the land from designated purposes specified in Section 12 of the Act because of the failure of the Authorities in acquiring the land.

##. Learned Sr. Counsel Shri J.R. Nanavati representing Bhavnagar University in opposing the petition of the land owners and their prayer for dereservation of the land under the Town Planning Act advanced somewhat intricate arguments based on the provisions of ULC Act.

##. In order to appreciate the arguments advanced on behalf of the Bhavnagar University, it would be necessary to state a few additional facts and examine the relevant provisions of the ULC Act. As has already been stated above, the petitioners Palitana Sugar Mills Private Limited purchased the land on 30-3-1971 which are admittedly within Bhavnagar Municipality, (now a Corporation). The ULC Act came into force on 17-2-1976 and admittedly, the petitioners held land in excess of the ceiling limit under the said Act. Section 21 of the ULC Act of 1976 contains provisions showing circumstances in which `excess vacant land' may be treated as not `excess'. The land which is proposed sought to be utilised for building houses/flats for the weaker sections of the society under a scheme to be approved by the prescribed authority of the State Government and sanctioned by the competent authority may be treated to be not in excess. Such scheme for construction of dwelling units for the weaker sections of the society should have been approved and sanctioned on such terms and conditions as may be prescribed including condition as to the time limit within which such buildings are to be constructed. Under subsection (2) of Section 21, if the conditions prescribed under a scheme approved and sanctioned by the State Government for construction of dwelling units for weaker sections of the society is contravened, the competent authority has been empowered, after granting of opportunity of hearing to the affected party, to declare such land to be `excess land' and there upon the relevant provisions of the ULC Act would apply to such land. In accordance with Section 21 of the ULC Act, the petitioners submitted a scheme for construction of houses for weaker sections of the society in respect of various plots purchased by them. The scheme submitted by the petitioners was sanctioned by the State Government

on 17-1-1979, for certain parcels of land excluding the land proposed to be reserved for Bhavnagar University which came to be so reserved only on 8-11-1985 with effect from 1-1-1986.

##. The above mentioned scheme for construction of dwelling houses for weaker sections was sanctioned on 6-12-1979 by the competent authority with the administrative approval of the State Government. The scheme approved 930 acres and 4 gunthas of land excluded land reserved for university campus and part reserved for civil aviation.

##. The Bhavnagar Borough Municipality in existence at the relevant time filed writ petition being Special Civil Application No. 941 of 1980 on 7-4-1980 in this Court challenging the order of the competent authority sanctioning the scheme.

##. An exparte order of stay was granted by this Court but it was vacated on 24-7-1980 granting liberty to the petitioners to construct dwelling units on the land for which scheme was approved and sanctioned but at its own risk and costs in view of the pendency of the petition.

##. We do not find it necessary to make a mention of several cases filed in this Court on the actions of the State Government and the competent authorities under the provisions of the ULC Act although few relevant facts have already been mentioned in earlier part of the judgment. It may however be relevant to mention that Bhavnagar University had also filed writ petition being Special Civil Application no. 5543 of 1991 to challenge the action of the State Government of modifying the development plan of Bhavnagar resulting in likely dereservation of land earmarked for Bhavnagar University. That petition was dismissed as infructuous on 23-8-1991 as the notification of the Government was later rescinded. The two other petitions being Special Civil Application No. 4427 of 1992 filed by the University to compel the State Government to acquire the reserved land for University under Section 10 and 11 of the ULC Act and similar petition jointly filed by a Member of the Senate of the University and one of its students being Special Civil Application No. 4733 of 1992 are being decided by this common judgment.

##. The petitioners were served with a show cause notice on 31-8-1989 by Additional Collector (ULC Bhavnagar) proposing action against the petitioners under Section 21(2) of the ULC Act on the ground that in accordance

with the laid down conditions in the scheme, the construction work for weaker sections of the society was not completed within five years. The above show cause notice issued by the competent authorities for action under Section 21(2) of the ULC Act was later on withdrawn by communication dated 22-11-1989.

##. The further developments with regard to the said land covered by the scheme for weaker sections, are that the Government of Gujarat took a decision to examine the alleged excess land of the petitioners under Section 20 of the ULC Act for its allotment to Gujarat Housing Board. The petitioners on 9-1-1991 offered the land to the extent of 1355467 sq. mts. at the rate of Rs. 25/- per sq. mtr. plus 15% interest. On the above offer, the State Government took a decision, sometime in May 1991 to exempt the land under Section 20 of the ULC Act on the condition that the land mentioned above would be made available to the Gujarat Housing Board at the price offered. The Government of Gujarat thereafter by letter dated 17-5-1991 asked the petitioners to withdraw of its pending petitions in the High Court, as a condition for considering their representation for exempting the land under Section 20 of the Act. Section 20 of the ULC Act empowers the State Government to exempt excess land from being vested in the State Government, if the land is proposed to be used for public purpose and it is in public interest so to do. Thereafter, the Government of Gujarat issued a notification on 13-6-1991 under Section 19 of the Town Planning Act proposing to release the petitioners' land from reservation earlier made for university campus. Suggestions and objections were invited from the members of the Public. The said notification was later rescinded on 23-8-1991. As a result the petitioners' land continues to be kept in reservation for University giving rise the present petition for seeking a declaration of its dereservation on the ground of failure of the authorities to acquire it within ten years and even on expiry of six months notice period in terms of Section 20 of the Town Planning Act.

##. The legislative development to be taken note of and which according to us is of utmost importance is that ULC Act has been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short the Repeal Act) which was brought into force in the State of Gujarat on 30-3-1999.

##. It is on the above stated additional facts and the legal provisions of ULC Act, it is argued on behalf of the University, that the facts and events show a

deep-rooted conspiracy and collusion between the land owners and the authorities of the State Government to deprive the University of the land reserved for it. It is submitted that so far as the `excess' vacant land is concerned the provisions of ULC Act had an overriding effect over the provisions of the Town Planning Act. The State Government acted in the interest of the land owners by first approving a housing scheme for weaker sections but in not taking action against the land owners in spite of the breaches of conditions of the scheme committed by them. It is submitted that attempts were made to dereserve the land in the proposed revised development plan solely with a purpose to indirectly confer benefit on the land owners. It is pointed out that but for the illegal grant of approval and sanction granted to the housing scheme proposed by the petitioners under Section 21 of the ULC Act and subsequently exempting the land for the Housing Board under Section 20 of the said Act, the land owners would have been entitled to only a fixed compensation not exceeding Rs. 2 lakhs in accordance with the provisions of Section 11(4) of the ULC Act of 1976. By not taking action either under Section 21 for contravention of the conditions of the approved scheme or under Section 20 of the ULC Act for declaring the land excess and deeming it to have vested in the State on payment of compensation in a fixed sum under Section 11(6) of the ULC Act, the land was allowed to remain in possession of the petitioners with malafide purpose to protect the statutory right of the petitioners under Section 20 of the Town Planning Act of serving six months notice for dereservation of the land. It is submitted that the land which could have been easily acquired as an excess land by paying a fixed compensation under Section 11(6) of the ULC Act has been made available to the land owners by giving them right to compel the competent authority under Section 20 of the Town Planning Act to acquire the land within six months notice period on payment of its market value in accordance with the provisions of the Land Acquisition Act instead of paying a fixed compensation under Section 11 of the ULC Act. On behalf of the University it is argued that the present legal situation has been created as a result of deep rooted conspiracy and collusion between the authorities of the State and the land owners. It is submitted that for the above reason this Court should decline to grant any relief to the land owners under Article 226 of the Constitution as its grant is discretionary and can be refused to a party who is guilty not only of committing breaches of the terms and conditions of the approved scheme under the ULC Act, but, as the facts and events demonstrate, is also found to have acted in collusion

with the authorities of the State Government.

##. Learned Sr. Counsel Shri Dhanuka made strenuous effort to answer to each of the contentions advanced by Sr. Counsel Shri J.R.Nanavati for the Bhavnagar University on the basis of various provisions of ULC Act and the decisions of Supreme Court and the High Courts relied upon by him to reinforce his submissions.

##. We do not however consider it necessary to go into the correctness of any of the contentions advanced before us by learned counsel in his counter reply on behalf of the land owners.

##. The argument advanced on behalf of the University based on the provisions of ULC Act seem some what perplexing. We however find that the entire edifice of the argument is founded on quick sand. The ULC Act of 1976 came into force on 17-2-1976 and contains provisions in Section 42 of the said Act giving overriding effect to the ULC Act over other laws inconsistent therewith.

##. The Town Planning Act of 1976 came into force with effect from 1-2-1978. We however do not find any inconsistency between the provisions of the two Acts. ULC Act has a different object and operates in a totally different field. It is aimed at taking possession of `excess land' beyond ceiling limit for its use in urban areas for fulfilling the needs of the poor and the homeless. The land owners whose land gets vested under ULC Act in the State are entitled to compensation at a prescribed rate and within prescribed limit under Section 11 of the ULC Act. The land so vested and for which compensation is payable under ULC Act can be kept under rereservation under the Town Planning Act. The Town Planning Act aims at regulating and controlling use of land for systematic development of towns and cities. The lands which already stand vested in the State and for which compensation is payable under Section 11 of the ULC Act are not required to be acquired under Section 20 of the Town Planning Act on payment of compensation in accordance with Land Acquisition Act. Prima facie there is no inconsistency between Section 11 of ULC Act and Section 20 of the Town Planning Act, which operate under two different enactments and in two different fields for achieving two different objectives. There is no question of applying the doctrine of eclipse as was advanced in the course of argument by the learned counsel appearing for the university. The doctrine of eclipse is applied to pre-constitutional laws which are inconsistent with the Constitution. The said doctrine can have no

application here because ULC Act has overriding effect over other laws in the matter of imposition of ceiling limit and acquisition of excess land.

##. In our considered opinion, the entire argument is totally academic after the repeal of the ULC Act of 1976 by ULC Repeal Act of 1999 which for State of Gujarat is brought into force with effect from 30-3-1999.

##. It is necessary now to examine the effect of the Repealing Act of 1999 on the Town Planning Act in order to find out whether the contentions advanced on the basis of Repealed Act have any force. It has already been stated in the facts mentioned above that the land owned by Palitana Sugar Mills was not declared as excess land in accordance with Section 21 on the basis of housing scheme approved by the State Government and sanctioned by the competent authority for weaker sections of the society. The lands were also exempted by the State Government for utilisation of land for public purpose under Section 20 of the ULC Act. The provisions of Section 20(a) and Section 20(1) of the ULC Act expressly provide that land which is allowed to be retained by the land owner for implementation of scheme for weaker sections of the society under Section 21 or the land which has been exempted under Section 20 of the said Act, would not be deemed to be `excess land' and hence would not vest in the State Government and other provisions of Chapter III of ULC Act of 1976 would have no application to such exempted excess land or land to be utilised under the scheme for weaker sections.

##. The land of Palitana Sugar Mills therefore did not vest in the State Government as it was covered by an approved scheme for weaker sections under Section 21 and was exempted land under Section 20 of the ULC Act. The land therefore although held in excess of the ceiling limit continued to be possessed by the land owners. The ULC Repeal Act of 1999 by provision contained in Section 3 therein retains for State only such lands which had vested in the State and of which possession had been taken by the State Government. All other categories of lands are completely exempted from the operation of ULC Act 1976 after its repeal. Section 3(1)(b) of the Act of 1999 clearly mentions that validity of grant of exemption to a land under Section 20 would be unassailable and remain unaffected by the repeal of the Principal Act. Provisions of Section 3 of ULC Repeal Act in its relevant part need to be reproduced:

"3.Savings - (1) The repeal of the principal Act

shall not affect -

(a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under subsection (1) of Section 20."

##. From the above provision contained in Section 3 of the Repeal Act, the effect of repeal is clear that the alleged excess land which was allowed to be retained by the land owners for implementing the scheme for weaker sections under Section 21 and exempted under Section 20 of the ULC Act of 1976, would remain unaffected by the repeal and its possession shall be allowed to be continued with the land owners, without any restriction.

##. We had an occasion to deal with the question of vires of the ULC Repeal Act in Special Civil Application No. 6678 of 1999 (with other group matters) - R.S. Raniga vs. State of Gujarat which was decided on 18-7-2000 where by we have upheld the provisions of the Repeal Act and rejected the challenge to the Act on the ground that it is not discriminatory or unconstitutional.

##. The consequences of repeal of a statute are that the transactions past and closed remain unaffected as a result of complete obliteration of the Act. The effect is also to destroy all inchoate rights and all causes of action that may have arisen under the repeal statute. (See Keshavan vs. State of Bombay AIR 1951 SC 128).

##. Section 6 of the General Clauses Act provide that "unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder OR affect any right, privilege, publication or liability acquired, accrued or incurred under any enactment so repealed". In the Repeal Act contrary intention has been expressed in Section 3 to save only such vacant land of which the State Government has already taken possession. The intention of the Repeal Act is clear that the land which was exempted under Section 20 and allowed to be possessed and put to proposed use under a scheme for

weaker sections under Section 21, shall not be deemed to be vested in the State. On repeal of ULC Act of 1976 no further action is contemplated to be taken nor can be taken in respect of such land. The alleged acts of omission and commission on the part of the land owners and the authorities of the State and their alleged inter se collusion cannot now be urged as a ground to nullify the effect of repeal of the ULC Act of 1976.

##. On behalf of the University, it was argued that as the land owners had committed breaches of the conditions on which the land was allowed to be retained by them for use for weaker sections and later exempted for allotment to housing board, this Court should decline to exercise discretion in their favour and refuse to grant them any relief. Mere allegations of collusion between the land owners and the Authorities of the State and allegations of breaches committed of the conditions of grant of exemption cannot lead to a definite conclusion without further enquiry and investigation, which is not now possible after the repeal of the Act, that in reality there was any such collusion and breaches of conditions of grant of exemption to the lands under the ULC Act. The whole arguments therefore built upon ULC Act of 1976 crumbles down on the Repeal of the said Act in the year 1999.

##. There is nothing urged on behalf of the State and no material is placed before us to hold that the land owners having acted in collusion with certain Authorities and committed breaches of the conditions of grant of exemption should be denied the discretionary relief from this Court under Article 226 of the Constitution of India.

Special Civil Application No. 6461 of 1996 Mahendra C. Raval v. State of Gujarat and others, Special Civil Application No. 6519 Hasmukhbhai Chhaganbhai Patel v. State of Gujarat, Special Civil Application No. 8882 of 1999 Registrar v. State of Gujarat & another and Special Civil Application No. 8885 of 1999 Naishadh B. Desai v. State of Gujarat and others all arising from Surat.

##. In this group of petitions arising from Surat Special Civil Application No. 6461 of 1996 and Special Civil Application NO. 6519 of 1998 have been filed by the land owners seeking a declaration that their lands reserved for South Gujarat University stand dereserved under Section 20 of the Town Planning Act for failure of

acquisition of their lands on expiry of ten years of final development plan and within six months notice period. Special Civil Application No. 8882 of 1999 has been filed on behalf of the South Gujarat University by its Registrar and Special Civil Application No. 8885 of 1999 has been filed by a Member of the Senate of the said University in which relief claimed is that the State Government be restrained from dereserving the land reserved for the University under the final development plan. In the above mentioned Special Civil Application No. 8882 filed on behalf of the University, Civil Application NO. 1171 of 2000 has been filed by one Cooperative Housing Society seeking permission to intervene and for being joined as a party to oppose the petition. This Civil Application has already been placed for orders along with the group matters.

##. So far as the group matters from Surat are concerned only few relevant dates are required to be taken note of. The final development plan for Surat under the Town Planning Act was brought into force with effect from 3-3-1986 in which the present petitioners land was reserved for South Gujarat University. The land owners who are petitioners in this group of petitions served a notice for acquisition on expiry of ten years period on 3-9-1998 requiring the competent authority to acquire the land within six months. No acquisition has so far been made, although, even at the time of filing of petition and in the course of hearing of the group petitions, offer was made by the land owners that they are prepared to receive compensation if the land acquisition proceedings are complete.

##. Prior to the expiry of ten years period from coming into force of final development plan with effect from 3-3-1983, the Surat Urban Development Authority on 28-2-1996 submitted a draft revised development plan which was published on 29-2-1996 and modifications to the same were published on 3-6-1997. The revised draft development plan has been submitted for sanction to the Government on 26-8-1987 in which the same lands are again proposed to be reserved for South Gujarat University.

Special Civil Application No. 3537 of 1995 Sonaben Ambalal Patel & Others v. Vadodara Urban Development Authority & Others arising from VADODARA.

##. The above mentioned Special Civil Application No. 3537 of 1995 has been preferred by land owners seeking a

relief that non-acquisition of land of the petitioners which was reserved in the final development plan of Vadodara for construction of Local Center of Vadodara Municipal Corporation on expiry of ten years within six months notice period results in lapsing of the reservation of the land under Section 20 of the Town Planning Act.

##. In the main Special Civil Application, mention is necessary of two Civil Applications i.e, Civil Application No. 7896 of 1996 by which amendment is proposed to the petition for challenging the constitutional validity of Section 21 of the Town Planning Act and Civil Application No. 6273 of 1997 by which proposed rereservation of land for needs of Municipal Corporation of Vadodara under proposed draft revised development plan has been challenged. In the Petition arising from Vadodara only few relevant dates worth noticing are that the final development plan showing petitioners land reserved for Local Center of Vadodara Municipal Corporation came into force on 25-1-1984. The petitioners issued six months for acquisition under Section 20(2) of the Town Planning Act on 21-7-1994. In the mean time, on 8-11-1993, a revised development plan under Section 9 read with Section 21 of the Town Planning Act was submitted to the State Government. Thereafter modifications to the said revised draft development plan were proposed on 28-10-1994 and the revised draft development plan was submitted to the Government on 22-12-1994 on which Government invited objections and suggestions from public on 9-3-1995. The revised development plan under Section 17 read with Section 21 of the Town Planning Act sanctioned by the State Government on 25-10-1996 which came into force on 26-11-1996.

##. In the group of cases arising from SURAT, arguments were advanced by Sr. Counsel Shri S.H. Sanjanwala and those were supported in his own way by Shri Y.N. Oza, learned counsel appearing for the Cooperative Society which sought intervention by Civil Application Nos. 1171 of 2000.

##. In the case arising from VADODARA, learned counsel Shri M.C. Bhatt advanced his arguments and supported the submissions in his own way made on behalf counsel appearing for the other group of cases.

##. We have already examined in details the provisions of the Town Planning Act and have tried to place a reasonable interpretation on the provisions of Section 20

and 21 to effectuate their conjoint operation. Before concluding, it would be necessary to deal with the alternative submission made on behalf of the land owners in all the cases in the group before us that but for a reasonable construction to be placed on the twin provisions contained in Section 20 and 21 of the Town Planning Act, the provisions contained in Section 21 which confer the power on the competent authorities to reserve and rereserve the lands in urban areas, in the process of revision of development plan once or more in every ten years, would be a provision exposed to serious objection on its constitutional validity.

##. On behalf of the land owners since we have tried to place a reasonable construction on the provisions of Section 20 and 21 to make their working practicable and not unjust to either the citizens or the State, we have not found the provisions of Section 21 to be irrational and unconstitutional. We find great force in the contention advanced on behalf of the land owners that if the provisions of Section 21 are interpreted in a manner as is sought to be done on behalf of the State so as to empower the State Government that every revision of the final draft development plan to keep the same land under reservation for decades or in perpetuity, then the provision would render nugatory the right given to a citizen for obtaining dereservation of his land on expiry of ten years and six months notice period under Section 20 of the Town Planning Act. The result of the interpretation sought to be placed by the State under Section 21 would be to perpetuate reservation with every revision of draft development plan once or more in 10 years, and a citizen irrespective of the provisions of Section 20 of the Act, would be deprived of optimum use of his land. It is true that Constitution no longer recognises right to property as a fundamental right under Article 19 of the Constitution but such indefinite or serious restraint on use of land on the property by the owner on such provision permitting perpetual reservation would suffer from the vice of being arbitrary and irrational under Article 14 of the Constitution.

##. We have already held above that even if in the revised development plan under Section 21 the Government chooses to continue to reserve the same land in the earlier final development plan, then also in that case, the consequences which have ensued on expiry of ten years and six months notice period by the land owners under Section 20(2) of the Town Planning Act would not get nullified. For conjoint operation of Section 20 and 21, the latter Section has to be interpreted in a manner so

as to make applicable to it provisions of Section 9 to 20, but subject to provisions contained in Section 20(2). If Section 21 is not so interpreted, Section 20(2) would be rendered nugatory and that cannot be held to be a legislative intent in making applicable the provisions of Section 20 to the process of fresh revision of development plan under Section 21. The provisions of Section 20(2) really express intention of the Legislature not to allow reservation of land indefinitely and in perpetuity to the serious prejudice of the land owner, particularly, in cases where acquisition of reserved land is not feasible for want of funds or other reasons by the authorities for whom the reservation is made.

##. We have also considered it necessary to refer to the judgment of Division Bench of this Court in Special Civil Application No. 3328 of 1979 (Atulkumar Dhruvkumar Engineer vs. Municipal Corporation of City of Ahmedabad) decided on 15-4-1991 in which one of us (J.M. Panchal, J) delivered the opinion for the Bench. The Division Bench in the case of Atulkumar (supra) referred to and relied on the decisions of Supreme Court in the Case of K.L. Gupte Vs. Municipal Corporation of Greater Bombay AIR 1968 SC 303 arising under the provisions of Bombay Town Planning Act, 1954 and State of Gujarat vs. Purshottamdas R. Patel AIR 1988 SC 220. On considering the ratio of the above two cases which also involve consideration of the operation of provisions of ULC Act, 1976, relief to the land owners was refused, despite expiry of ten years period and service of six months notice under Section 20 of the Town Planning Act. The distinguishing feature that has to be noticed in the case of Atulkumar (supra) is that apart from the effect of the ULC Act which was taken into consideration in that case, the Corporation had taken steps within the meaning of Section 20(2) of the Town Planning Act for acquisition of the land under reservation. The relevant portion of the judgment contained in its paragraph 20 reads thus:

> "In fact the record of case shows that the Corporation has taken steps by making applications to the State Government for acquiring land and the State Government has also issued Government Resolution under Section 78 of the Bombay Provincial Municipal Corporation Act, 1949, and therefore, conditions laid down in Section 11(3) are not satisfied before a declaration to that effect that the reservation has lapsed can be granted."

##. It may also be noted that at the time of decision of

Special Civil Application No. 3328 of 1979 in Atulkumar's case, ULC Act, 1976 was not in force and the operative part of the directions of the Division Bench, therefore, given to the Competent Authorities under the Ceiling Act is to take appropriate steps within a specified time for taking possession and vesting of the land. We, therefore, find the judgment of the Division Bench in Atulkumar's case completely distinguishable on facts and state of law existing then, that is at the time when ULC Act was also in operation.

###. Consequently, the fate of the Petitions in this group is as under:-

###. In the result, both Special Civil Applications Nos. 4210 of 1985 and Special Civil Application No. 10108 of 1994 filed on behalf of the land owners are hereby allowed. It is held that the lands reserved for Bhavnagar University, having not been acquired within ten years from the date of coming into force of the existing final development plan or within six months of the notice period, shall stand released in favour of the petitioners for development by them in accordance with law. The reservation of the land for Bhavnagar University is declared to have been lapsed with all consequential effects under the Town Planning Act of 1976.

Rule is made absolute to the aforesaid extent.

###. Special Civil Application No. 4427 of 1992 filed by the Bhavnagar University and Special Civil Application NO. 4733 of 1992 filed jointly by a Member of Senate and a student of Bhavnagar University are dismissed.

Rule is discharged.

Interim relief, if any, granted earlier stands vacated.

###. Special Civil Application No. 941 of 1980 filed by the then Bhavnagar Municipality is also dismissed. The Public Interest Litigations being Special Civil Application No. 2716 of 1998, Special Civil Application NO. 4847 of 1992 and Special Civil Application No. 4153 of 1991 are also dismissed.

Rule is discharged.

Interim relief, if any, granted earlier stands vacated.

###. Civil Application No. 15529 of 1999 in Special Civil Application No. 10108 of 1994, Civil Applications No. 15533 and 15534 both of 1999 in Special Civil Application No. 4733 of 1992, Civil Application No. 15532 of 1999 in Special Civil Application No. 4427 of 1992, Civil Application No. 15531 of 1999 in Special Civil Application No. 4427 of 1992, Miscellaneous Civil Application No. 40 of 1982 and Civil Application No. 3014 of 1980 in Special Civil Application No. 941 of 1980, Civil Application No. 1821 of 1993 in Special Civil Application No. 4210 of 1985 also shall stand disposed of in view of the success of petitions by the land owners.

No further orders need be passed in these Civil Applications.

###. Special Civil Applications Nos. 6461 of 1996 and 6519 of 1998 filed by the land owners in Surat City are allowed. Their lands reserved having not been acquired within the prescribed time under Section 20(2) of the Town Planning Act would stand dereserved, irrespective of issuance of proposed revised development plan or the final revised development plan under Section 21 of the Act.

Rule in both the petitions is made absolute.

###. Similarly, Special Civil Application No. 3537 of 1995 arising from Vadodara City also stands allowed. The petitioner's land reserved for Local Centre of Vadodara Municipal Corporation shall stand dereserved on failure of the authorities to acquire the land within the prescribed period under Section 20(2) of the Town Planning Act and regardless of issuance of draft revised development plan and issuance of final revised development plan within ten years and sanction of final revised development plan on expiry of ten years.

Rule is made absolute.

All pending Civil Applications Nos. 6274/97, 6273/97 and 7896/97 in Special Civil Application No. 3537 of 1995 shall also stand disposed of.

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filed by the South Gujarat University and Special Civil Application No. 8885 of 1999 filed by one of the Members of Senate of the University seeking rereservation of the land are hereby dismissed.

Rule in both the petitions is discharged.

Interim relief, if any, granted earlier shall stand vacated.

Since several intricate questions of law were involved, we leave the parties to bear their own costs in all these petitions.

(D.M. DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J.)

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